



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: William Bolick
Serial No.: 10/078,078
Filed: 02/15/2002
For: Transversely Moving Cable Control
Confirmation No.: 6922
Group Art Unit: 3682
Examiner: Chong Hwa Kim
Attorney Docket No.: PBOLIWC

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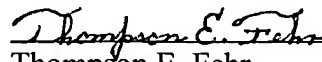
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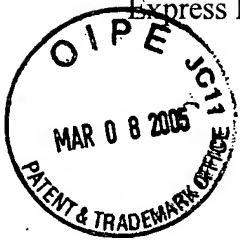
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APPELLANT'S BRIEF (37 CFR 41.37)

This brief is in furtherance of the Notice of Appeal filed in this case on September 8, 2004.

The fees required under § 41.20 and any required petition for extension of time for filing this brief and fees therefor are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

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This brief contains the following items, under headings of the same name and in the order given:

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CLAIMS APPENDIX

The final page of this brief bears the attorney's signature.

REAL PARTY IN INTEREST

The real party in interest is William Bolick.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants or Appellants' legal representative which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1 has been rejected.

Claims 2 through 5 have been withdrawn.

Claim 6 through 14 have been rejected.

The claims being appealed are claims 1 and 6 through 14.

STATUS OF AMENDMENTS

No amendment has filed subsequent to final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The subject matter of the independent claims, *i.e.*, claims 1, 6, 10 and 14 is summarized in lines 2 through 21 on page 5 and in line 2 on page 7 through line 4 on page 8 of the Application as originally filed:

The Transversely Moving Cable Control, as its name implies, creates a pull on one or both ends of a cable by exerting a force transverse to the path of the cable while maintaining the cable (at points other than the area where the second cable acts and the ends of the cable) in substantially the original position of the cable.

Such transverse movement, consequently, causes at least one end of the cable to be drawn longitudinally closer to the Transversely Moving Cable Control, just as in the case of the control systems of the prior art. And allowing the cable to move transversely closer to its original path permits such end of the cable to move farther from the Transversely Moving Cable Control since the cable--when the lever has been moved from its original (rest) position--traditionally has some force acting longitudinally along the cable in the direction opposite to the movement caused by the transverse movement of the cable away from its original path. Again, the resultant effect is the same as that achieved with a traditional control system.

Since the activating force for a device is not created by pulling one end of the cable, the Transversely Moving Cable Control can be position either at an end of the cable or at an intermediate position along the cable.

Moreover, no outer cable or sheath is necessary; and the segments of the cable do not have to be parallel to one another as such segments depart the Transversely Moving Cable Control.

And the mechanical advantage of the Transversely Moving Cable Control can be made adjustable.

...

As illustrated in Figure 1, the Transversely Moving Cable Control has a lever 1 rotatably attached to a hollow base plate 2 with a pivot 3.

When the lever 1 has been rotated into the base plate 2 to the maximum extent possible, the cable 4 follows its original path. As the lever 1 is rotated

outward from the base plate 2, the cable 4, between a cable guide 7 and an exit 8 from the lever 1, *i.e.*, the portion of the cable 4 which is within the transversely moving cable control, is moved substantially transversely to the original path of the cable 4, preferably by a pulley 9 attached to the lever 1 across which pulley 9 the cable 4 runs, although a simple projection would suffice for this purpose, while the cable guide 7 and the exit 8 maintain the segments which lie outside the cable guide 7 and the exit 8, *i.e.*, the outer segments of the cable 4, in substantially the original positions of such segments of the cable 4. If a first end 5 of the cable 4 is anchored, such outward rotation of the lever 1 draws a second end 6 of the cable 4 longitudinally closer to the Transversely Moving Cable Control. Even, however, if the first end 5 of the cable 4 is not anchored, greater friction is encountered by the cable 4 within the lever 1 than within the cable guide 7 that is preferably rotatably attached to the base plate 2 so that generally only the second end 6 of the cable 4, and not the first end 5, is drawn closer to the Transversely Moving Cable Control. (As a practical matter, though, the first end 5 of the cable 4 is always anchored, either at the exit 8 for the cable 4 from the lever 1 or at some point farther from the exit 8 when used with a bicycle. And, in fact, the exit 8 could be eliminated and methods that are well known in the art could be used to adapt the lever for attachment of the first end 5 of the cable 4, such as simply enlarging the cable 4 just beyond the exit 8 outside the lever 1, as illustrated in Figure 4.)

Similarly, as the lever 1 is allowed to rotate into the base plate 2, the cable 4 is moved transversely closer to the original path of the cable 4 so that the second end 6 of the cable 4 is allowed to move longitudinally farther from the Transversely Moving Cable Control.

The distance which the cable 4 is moved--and, consequently, the mechanical advantage of the Transversely Moving Cable Control--can be increased either by having the pulley 9 removably attached to the lever 1 and replacing the original pulley 9 with a pulley 9 having a greater diameter than the original pulley 9 or by moving the pivot 10 of the pulley 9 farther from the pivot 3 within the channel 26, which in the preferred embodiment of the Transversely Moving Cable Control exists--as portrayed in Figure 2, within the lever 1, so that when the lever 1 is rotated outward from the base plate 2, the pulley 9 will be farther from the original path of the cable 4. (The pivot 10 can be released, moved within the channel 26, and releasably fastened at another location within the channel 26 by using techniques which are well known in the art.)

Claim 10 does not, however, necessarily claim the cable guide 7 and the exit aperture 8.

In terms of the species currently under consideration, the means for transversely moving the portion of a cable which is within the transversely moving cable control to create a pulling

force upon one or both ends of said cable of claim 1 comprises, as explained in lines 4 through 22 on page 7 of the application as originally filed, the hollow base plate 2, the lever 1, and the projection or pulley 9; and the means for maintaining the segments of said cable which are outside the transversely moving cable control substantially in the original positions of such segments comprises, as explained in lines 4 through 22 on page 7 of the application as originally filed, the hollow base plate 2, the cable guide 7, and the exit aperture 8.

The means for transversely moving an intermediate portion of said cable to create a pulling force upon one or both ends of said cable and for maintaining a second segment of said cable which lies outside the transversely moving cable control in substantially the original position of such second segment of said cable of claim 6 comprises, as explained in lines 4 through 22 on page 7 of the application as originally filed, the lever 1, the projection or pulley 9, and the exit aperture 8.

The means for transversely moving an intermediate portion of said cable to create a pulling force upon one or both ends of said cable, said means for transverse movement being adapted for attachment of the first end of said cable, of claim 10 comprises, as explained in lines 4 through 22 on page 7 of the application as originally filed, the lever 1, the projection or pulley 9, and either (a) any structure well known in the art for attachment of the first end 5 of the cable 4 to the lever 1 or (b) the exit aperture 8 and an enlargement of the cable 4 just beyond the exit 8 outside the lever 1, as illustrated in Figure 4.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner has rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by Ross (United States patent no. 4,066,154).

The Examiner has rejected claims 6 through 9 under 35 U.S.C. § 102(b) as being anticipated by Ross (United States patent no. 4,066,154).

The Examiner has rejected claim 10 through 13 under 35 U.S.C. § 102(b) as being anticipated by Ross (United States patent no. 4,066,154).

And the Examiner has rejected claim 14 under 35 U.S.C. § 102(b) as being anticipated by Ross (United States patent no. 4,066,154).

ARGUMENT

Claim 1

35 U.S.C. § 102

The Examiner has said, in the Office Action mailed on March 8, 2004:

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ross, U.S. Patent 4,066,154.

Ross shows, in Figs. 1-3, a transversely moving cable control, for controlling a cable 12, the cable having a portion within the transversely moving cable control 17, segments outside the transversely moving cable control, and original position for all portions and segments of the cable before the transversely moving cable control has been activated, which comprises:

A means 23 for transversely moving the portion of the cable which is within the transversely moving cable control to create a pulling force upon one end 12' of the cable; and

a means 24 for maintaining the segments of the cable which are outside the transversely moving cable control substantially in the originally positions of such segments.

Claim 1 reads as follows:

1. A transversely moving cable control, for controlling a cable, said cable having a portion within said transversely moving cable control, segments outside said transversely moving cable control, and original positions for all

portions and segments of said cable before said transversely moving cable control has been activated, which comprises:

a means for transversely moving the portion of a cable which is within the transversely moving cable control to create a pulling force upon one or both ends of said cable; and

a means for maintaining the segments of said cable which are outside the transversely moving cable control substantially in the original positions of such segments.

Appellant respectfully submits that the cable of Ross (4,066,154) only has one segment outside of the cable control. This is evident from the drawings and the fact that the inner end of the cable is anchored inside the cable control while the remainder of the cable exits the cable control at only one point which is noted in lines 2 through 7 of column 2 of Ross: "At its inner end 12' cable 12 is anchored to the wheel 20, and it is wound on the wheel 20 in the central groove 20' thereof. From the groove 20' the cable progresses about a roller 23 and then out of the mechanism through an aperture 24 formed in part 16."

The Examiner, in the Office Action mailed on March 8, 2004, however, has asserted, ". . . it is the Examiner's view, as broadly construed, that any parts of the cable outside the transversely moving cable control 17 as shown by Ross can be construed as segments separated by any imaginable lines envisioned by one of ordinary skill in the art."

Appellant respectfully suggests that this is not a reasonable interpretation of "segment." In lines 9 through 12 on page 7 of the Application as originally filed, Appellant (for the embodiments implicitly defines "segment" as being the outer segments of the cable 4:

. . . the cable guide 7 and the exit 8 maintain the segments which lie outside the cable guide 7 and the exit 8, *i.e.*, the outer segments of the cable 4, in substantially the original positions of such segments of the cable 4. . . .

It is, Appellant respectfully observes, clear that one segment is maintained in substantially its original position by the cable guide 7; and the other segment is maintained in substantially its original position by the exit 8.

More importantly, Appellant further respectfully submits that the device of Ross lacks “a means for transversely moving the portion of a cable which is within the transversely moving cable control to create a pulling force upon one or both ends of said cable.”

The present Application indicates that, contrary to the traditional cable control, the device of the present Application does not pull the cable from an end, which requires an anchored sheath; rather, the device of the present Application exerts a transverse force on the cable within the cable control to move that portion of the cable in a transverse direction while maintaining the segments outside the cable control in substantially their original positions.

Line 17 on page 5 of the present Application explicitly observes, “. . . no outer cable or sheath is necessary” Ross, however, states, in lines 7 through 8 of column 2, “The sheath 13 for the cable is dead ended in the aperture 24.” This is necessary for the device of Ross because that device pulls the cable from the inner end 12’ along substantially the original path of the cable, rather than transversely moving the cable.

The *American Heritage Dictionary of the English Language*, which was published by American Heritage Publishing Co., Inc. and Houghton Mifflin Company and copyrighted in 1970, defines “transverse” as “[s]ituated or lying across; athwart; crosswise.”

In lines 26 through 33 of column 2 Ross describes the operation of his device: “Now for a description of the operation of the device: In order to apply the brake, the handle 14 is pushed down or squeezed toward the handlebar 15. When this is done, the part 17 and wheel 20 rotate

in unison on the pin **21** in a clockwise direction As the wheel **20** turns, the cable is wound thereon to pull it to apply the caliper brake **10, 10', 10"** to the wheel rim **11**.

Thus, Applicant respectfully observes that Ross does not anticipate claim 1.

The Examiner has responded to this argument by saying, in the Office Action mailed on March 8, 2004:

. . . It is agreed that as the control **17** is actuated by the operator's hand, the cable **12** is wound around the wheel **20**. However, the wheel **20** is not the only device that pulls the cable. As shown in Fig. 1, the means **23** by actuation of the control **17** pulls the portion of the cable that partly wraps the means **23** as well as the means **23** travels in an arcuate path about the axle **21**. Therefore, such pulling action on the cable can be interpreted as being in the transverse direction.

Ross, in line 66 of column 1 through line 9 of column 2, however, explains:

. . . the part **17** and its handle **14** is thus also pivotal or rotatable about the same axis as the wheel **20**; that is to say, on the pin **21**.

The cable **12** is periodically wound on the wheel **20** as brake shoe wear occurs. At its inner end **12'** cable **12** is anchored to the wheel **20**, and it is wound on the wheel **20** in the central groove **20'** thereof. From the groove **20'** the cable progresses about a roller **23** and then out of the mechanism through an aperture **24** formed in part **16**. The sheath **13** for the cable is dead ended in the aperture **24**. The roller **23** is mounted in part **17** on a pin **25**.

Being a roller mount on a pin, roller **23** lacks the ability to pull the cable **12** or anything else. Roller **23** could, at most, push something. The orientation of the roller **23** and the pin **21** demonstrates beyond cavil, though, that it is physically impossible for the roller **23** to push the cable **12**. When the lever **17** is in its rest position, the roller **23** is above the pin **21** and on the same side (the right) of the pin **21** as the handle **14**. Thus, when the handle **14** is depressed to pull the end of the cable **12** as described above, the roller **23** must move downward in a circle having its center at the pin **21**. Such downward movement actually decrease the force that the

roller 23 exerts on the cable 12, allowing the cable sag, rather than creating “a pulling force upon one or both ends of said cable” as mandated by claim 1 of the present application.

MPEP § 2131 relevantly provides, in pertinent part:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegall Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1239, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis*, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Claims 6 and 7

35 U.S.C. § 102

Next, the Examiner has declared:

Claims 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ross, U.S. Patent 4,066,154.

Ross show, in Figs. 1-3, a transversely moving cable control for controlling a cable 12, the cable having segments in original position before the transversely moving cable control has been activated, which comprises;

a hollow base plate 16 to maintain the segments of a cable which lie outside the transversely moving cable control in substantially the original position (as shown in Fig. 1 inside the section 24) of such segments of the cable;

a means 23, 24 for transversely moving an intermediate portion of the cable to create a pulling force upon one end of the cable and for maintaining a second segment of the cable which lies outside the transversely moving cable control in substantially the original position of such second segment of the cable;

wherein the means for transverse movement and maintaining the second segment in substantially the original position of such cable comprises;

a cable guide 24 attached to the hollow base plate to maintain the segment of a cable which lies outside the hollow base plate beyond the cable guide in substantially the original position of the cable;

a lever 14 rotatably attached to the hollow base plate;

a pulley 23, the pulley having a pivot 25, attached to the lever across which pulley the cable runs so that when the lever is rotated away from the base plate, the pulley exerts a transverse force on the cable which causes the cable to move in a transverse direction creating the pulling force on one end of the cable;

an exit aperture (at the upper portion of the lever 14 as shown in Fig. 1) in the lever to maintain the segment of the cable which lies outside hollow base plate beyond the exit aperture in substantially the original position of the cable;

wherein the pulley is removably attached to the lever; and

a channel (the hole wherein the pins 25 of the pulley are inserted therein) in the lever within which the pivot of the pulley can be releasably fastened, released, moved, and releasably fastened again.

Claim 6, upon which claims 7, 8, and 9 depend provides:

6. A transversely moving cable control for controlling a cable, said cable having segments in original positions before said transversely moving cable control has been activated, which comprises:

a hollow base plate to maintain the segments of a cable which lie outside the transversely moving cable control in substantially the original positions of such segments of said cable; and

a means for transversely moving an intermediate portion of said cable to create a pulling force upon one or both ends of said cable and for maintaining a second segment of said cable which lies outside the transversely moving cable control in substantially the original position of such second segment of said cable.

Therefore, Applicant respectfully believes that the reasoning discussed above for claim 1 demonstrates that Ross does not anticipate claim 6 through 9.

In analyzing what constitutes the means for claim 6, however, Appellant discovered some confusion which, although not mentioned by the Examiner, Appellant feels it is his duty to call to the attention of the Board. The hollow base plate maintains the segment of the cable which extends outside of the cable control beyond the hollow baseplate in substantially its original

position while the exit maintains the segment of the cable that extends outside of the cable control beyond the exit in substantially its original position, as explained above in view of lines 9 through 12 on page 7 of the Application. Claim 6 erroneously indicates that the hollow base plate so maintains both outside segments. And the reference to “second segment” in claim 6 may not unambiguously indicate that the segment in question is the segment of the cable that extends outside of the cable control beyond the exit.

Furthermore, claim 7 erroneously indicates that the cable guide is part of the means for transverse movement and maintaining said second segment in substantially the original position of such cable.

Claim 8

35 U.S.C. § 102

Since claim 8 depends upon claim 7, which depends upon claim 6, Appellant respectfully suggests that the argument above demonstrates that claim 8 is not anticipated by Ross.

Furthermore, Appellant cannot locate any statement in Ross indicating that the roller 23 is releasably attached to part 17, providing a further patentable distinction between claim 8 and Ross.

Appellant must, however, note that the dependence of claim 8 upon claims 6 and 7 infuses the errors of those claims into claim 8.

Claim 9

35 U.S.C. § 102

Since claim 9 depends upon claim 7, which depends upon claim 6, Appellant respectfully suggests that the argument above demonstrates that claim 9 is not anticipated by Ross.

Applicant must, moreover, respectfully observe that nothing within Ross indicates that the hole wherein the pins 25 of the pulley are inserted is “a channel in the lever within which the pivot of said pulley can be releasably fastened, released, moved, and releasably fastened again,” as suggested by the Examiner in the Office Action mailed on March 8, 2004.

Appellant must, however, note that the dependence of claim 9 upon claims 6 and 7 infuses the errors of those claims into claim 9.

Claims 10 and 11

35 U.S.C. § 102

Claim 10 states:

10. A transversely moving cable control for controlling a cable, said cable having segments in original positions before said transversely moving cable control has been activated and said cable having a first end, which comprises:

a hollow base plate to maintain the segments of a cable which lie outside the transversely moving cable control in substantially the original positions of such segments of said cable; and

a means for transversely moving an intermediate portion of said cable to create a pulling force upon one or both ends of said cable, said means for transverse movement being adapted for attachment of the first end of said cable.

Consequently, Applicant respectfully believes that the reasoning discussed above for claim 1 demonstrates that Ross does not anticipate claim 10.

Claim 11 declares:

11. The transversely moving cable control as recited in claim 10, wherein the means for transverse movement adapted for attachment of the first end of the cable comprises:

a cable guide attached to said hollow base plate to maintain the segment of a cable which lies outside said hollow base plate beyond said cable guide in substantially the original position of the cable;

a lever adapted for attachment of the first end of the cable and rotatably attached to said hollow base plate; and

a pulley, said pulley having a pivot, attached to said lever across which pulley the cable runs so that when the lever is rotated away from said base plate, the pulley exerts a transverse force on the cable which causes the cable to move in a transverse direction creating said pulling force on one or both ends of the cable.

And claims 12 and 13 depend upon claim 11.

Thus, Applicant respectfully believes that the reasoning discussed above for claim 1 demonstrates that Ross does not anticipate claim 11 through 13.

As with claim 6, claim 10, however, erroneously indicates that the hollow base plate so maintains both outside segments.

And, similarly to the situation with respect to claim 7, claim 11 erroneously indicates that the cable guide is part of the means for transverse movement adapted for attachment of the first end of the cable.

Claim 12

35 U.S.C. § 102

Since claim 12 depends upon claim 11, which depends upon claim 10, the argument present above for claim 8 is equally applicable to claim 12.

Claim 13

35 U.S.C. § 102

Since claim 132 depends upon claim 11, which depends upon claim 10, the argument present above for claim 9 is equally applicable to claim 13.

Claim 14

35 U.S.C. § 102

And claim 14 reads:

14. A process for exerting a control force at one or more ends of a cable, said cable having an intermediate portion and outer segments in original positions before said process commences, which comprises:

transversely moving an intermediate portion of said cable to create a pulling force upon one or both ends of said cable; and

simultaneously maintaining the outer segments of said cable substantially in the original positions of such segments.

Once again, Appellant, therefore, respectfully believes that the reasoning discussed above for claim 1 demonstrates that Ross does not anticipate claim 14.

CLAIMS APPENDIX

1. A transversely moving cable control, for controlling a cable, said cable having a portion within said transversely moving cable control, segments outside said transversely moving cable control, and original positions for all portions and segments of said cable before said transversely moving cable control has been activated, which comprises:

a means for transversely moving the portion of a cable which is within the transversely moving cable control to create a pulling force upon one or both ends of said cable; and

a means for maintaining the segments of said cable which are outside the transversely moving cable control substantially in the original positions of such segments.

6. A transversely moving cable control for controlling a cable, said cable having segments in original positions before said transversely moving cable control has been activated, which comprises:

a hollow base plate to maintain the segments of a cable which lie outside the transversely moving cable control in substantially the original positions of such segments of said cable; and

a means for transversely moving an intermediate portion of said cable to create a pulling force upon one or both ends of said cable and for maintaining a second segment of said cable which lies outside the transversely moving cable control in substantially the original position of such second segment of said cable.

7. The transversely moving cable control as recited in claim 6, wherein the means for transverse movement and maintaining said second segment in substantially the original position of such cable comprises:

a cable guide attached to said hollow base plate to maintain the segment of a cable which lies outside said hollow base plate beyond said cable guide in substantially the original position of the cable;

a lever rotatably attached to said hollow base plate;

a pulley, said pulley having a pivot, attached to said lever across which pulley the cable runs so that when the lever is rotated away from said base plate, the pulley exerts a transverse force on the cable which causes the cable to move in a transverse direction creating said pulling force on one or both ends of the cable; and

an exit aperture in said lever to maintain the segment of the cable which lies outside said hollow base plate beyond said exit aperture in substantially the original position of the cable.

8. The transversely moving cable control as recited in claim 7, wherein:

said pulley is removably attached to said lever.

9. The transversely moving cable control as recited in claim 7, further comprising:

a channel in the lever within which the pivot of said pulley can be releasably fastened, released, moved, and releasably fastened again.

10. A transversely moving cable control for controlling a cable, said cable having segments in original positions before said transversely moving cable control has been activated and said cable having a first end, which comprises:

a hollow base plate to maintain the segments of a cable which lie outside the transversely moving cable control in substantially the original positions of such segments of said cable; and

a means for transversely moving an intermediate portion of said cable to create a pulling force upon one or both ends of said cable, said means for transverse movement being adapted for attachment of the first end of said cable.

11. The transversely moving cable control as recited in claim 10, wherein the means for transverse movement adapted for attachment of the first end of the cable comprises:

a cable guide attached to said hollow base plate to maintain the segment of a cable which lies outside said hollow base plate beyond said cable guide in substantially the original position of the cable;

a lever adapted for attachment of the first end of the cable and rotatably attached to said hollow base plate; and

a pulley, said pulley having a pivot, attached to said lever across which pulley the cable runs so that when the lever is rotated away from said base plate, the pulley exerts a transverse force on the cable which causes the cable to move in a transverse direction creating said pulling force on one or both ends of the cable.

12. The transversely moving cable control as recited in claim 11, wherein:

said pulley is removably attached to said lever.

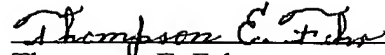
13. The transversely moving cable control as recited in claim 11, further comprising:
a channel in the lever within which the pivot of said pulley can be releasably fastened, released, moved, and releasably fastened again.

14. A process for exerting a control force at one or more ends of a cable, said cable having an intermediate portion and outer segments in original positions before said process commences, which comprises:

transversely moving an intermediate portion of said cable to create a pulling force upon one or both ends of said cable; and

simultaneously maintaining the outer segments of said cable substantially in the original positions of such segments.

DATED this 8th day of March, 2005.

A handwritten signature in cursive script, reading "Thompson E. Fehr", is written over a horizontal line.

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